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DYKEMA GOSSETT PLLC  
FRANKLIN SQUARE, THIRD FLOOR WEST  
1300 I STREET, NW  
WASHINGTON, DC 20005

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**OFFICE OF PETITIONS**

In re Application of :  
Miettinen : DECISION ON APPLICATION  
Application No. 10/069,134 : FOR PATENT TERM ADJUSTMENT  
Filed: March 6, 2002 :  
Atty. Dkt. No: 66411-065 :

This is a decision on the "PETITION TO CORRECT PATENT TERM ADJUSTMENT" filed June 13, 2006. This matter is being properly treated under 37.CFR 1.705(b) as an application for patent term adjustment.

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN.**

The correct PTA at the time of the allowance is 812 days as further detailed herein.

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application, mailed June 2, 2006, indicated that the PTA to date is 751 days. The instant application for patent term adjustment was timely filed June 13, 2006. Applicants request that the PTA be corrected from 751 days to reflect an adjustment of 869 days. Applicants argue that the adjustment was improperly reduced 56 days, and, further, argue that the correct application filing date is March 6, 2002, which would alter the calculation for the adjustment under 37 CFR 1.702(a)(1).

Applicants are correct in that the adjustment under 37 CFR 1.702(a)(1) was calculated based on an incorrect filing date. The filing date having been corrected to reflect a filing date of March 6, 2002, the application is entitled to an adjustment of 868 days under 37 CFR 1.702(a)(1). The adjustment began May 6, 2002, the day after the date that is 14 months from the date that the application fulfilled the requirements of 35 U.S.C. 371, and ended September 20, 2005, the date the non-final Office action was mailed. See, 37 CFR 1.703(a)(1).

The adjustment of 868 days is properly reduced 56 days in accordance with 37 CFR 1.704(c)(8) in connection with the supplemental reply (IDS) submitted January 31, 2006. Applicants argue that the IDS submitted January 31, 2006 was submitted within one day of receipt by applicant and five days from the mailing date by the European Patent Office.

Applicants are advised that a paper containing only an information disclosure statement in compliance with §§ 1.97 and 1.98 will not be considered a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application under paragraphs (c)(6), (c)(8), (c)(9), or (c)(10) of this section if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in § 1.56(c) more than **thirty days** prior to the filing of the information disclosure statement. This thirty-day period is not extendable. See, 37 CFR 1.704(d).

The IDS submitted January 31, 2006 lacks the required statement. Instead, the IDS submitted January 31, 2006 contains a statement that the "information contained therein was not cited in a communication from a foreign patent office in a counterpart foreign application or, to my knowledge after making reasonable inquiry, was known to any individual designated in 37 CFR 1.56(c) more than **three months** prior to the filing of his Information Disclosure Statement."

In view of the lack of the required statement, the reduction of 56 days is deemed proper.

Accordingly, at the time of allowance, the application is entitled to an adjustment of 812 days.

The required \$200.00 application fee has been charged to applicants' deposit account as authorized.

The patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

The application is being forwarded to Office of Patent Publications for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.

*Kery A. Fries*

Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy